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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' STATUS REPORT
REGARDING REVIEW OF
DOCUMENTS AND
DATA**

Pursuant to the Court's June 5, 2012 Case Management Order (Dkt. No. 148), and the Court's June 28, 2012 Order re Discovery, Plaintiffs submit the following status report regarding productions and review of documents and data.

I. DEFENDANTS' DOCUMENT PRODUCTION

Defendants have now produced a total of approximately 1,624,802 pages of documents.¹ Of these, approximately 103,905 pages were produced originally to the United States Department of Justice ("DOJ Documents"), and were produced to Plaintiffs on or about the Court's November 30, 2011 deadline. (Dkt. No. 88.) Plaintiffs have reviewed these documents.

The remaining approximately 1,520,897 pages ("Post-DOJ Documents") were produced recently. As of the June 4, 2012 case management conference, Defendants had produced 100,368 pages of the Post-DOJ Documents. Between June 4 and June 8, Defendants produced an additional 68,925 pages. The remaining 1,351,603 pages were produced to Plaintiffs after June 8. Of these, Defendants produced approximately 87,226 pages after June 15,² and all Defendants have stated they will be producing more in July. (See Dkt. No. 154, ¶ 12; Dkt. No. 155, ¶ 4; Dkt. No. 156 ¶ 8; Dkt. No. 157 ¶¶ 5-6; Dkt. No. 158, ¶¶ 6-8; Dkt. No. 159, ¶ 2; Dkt. No. 160, ¶ 8.)

Defendants have not yet completed production of documents from the files of several key custodians. On June 28, 2012, counsel for Apple informed Plaintiffs that Apple's production of documents from Steve Jobs's files is not yet complete. Apple's counsel estimated that it will require up to July 5 to complete production of these documents. Intuit will produce additional documents from the files of William Campbell (Intuit's Chairman and former CEO, and Apple board member) and Brad Smith (Intuit's President and CEO). Adobe will produce additional documents from the files of Shantanu Narayen (Adobe's President and CEO), among others. While Lucasfilm informed Plaintiffs' counsel that George Lucas does not use personal email or any computer system (and accordingly does not have responsive electronically stored

¹ This page count does not include Defendants' data productions.

² Intel alone produced an additional 75,769 pages on June 25, 2012. Today, Lucasfilm produced another 6,270 pages of documents.

1 information), Lucasfilm refuses to search the files of George Lucas for responsive hardcopy
2 documents.³

3 Because the great majority of Defendants' total document productions took place
4 after June 8, and will continue into July, Plaintiffs' review of Defendants' Post-DOJ Documents
5 is ongoing.

6 On June 21, 2012, three days after Defendants certified that their document
7 productions were substantially complete (*see* Dkt. Nos. 154-160), Plaintiffs identified five
8 percipient witnesses for pre-class certification depositions and noticed their depositions for the
9 week of July 9. Adobe proposed to reschedule its witness to July 17 or 18 due to scheduling
10 conflicts. Pixar indicated that its witness will not be available until after July 20.⁴ Lucasfilm
11 asked Plaintiffs to offer alternative dates during the last two weeks of July. Today, Apple
12 proposed July 19, 2012 for its witness. Plaintiffs' motion for class certification is currently due
13 on July 19, 2012.

14 **II. DEFENDANTS' DATA PRODUCTION**

15 Defendants have now produced approximately 665 datasets consisting of
16 approximately 11.5 gigabytes. Defendants produced significant data before June 15, 2012, and
17 have continued to produce additional data since then. Due to gaps in data, Defendants have not
18 yet completed their data productions.

19 For example, since June 15, Plaintiffs determined that Adobe omitted from its data
20 compensation information for one of the Named Plaintiffs who worked for Adobe. As a result of
21 Plaintiffs' identifying this issue, Adobe advised that it made errors in determining what data to
22 produce, and inadvertently omitted compensation information for multiple members of the
23 proposed class. Adobe has not completed supplementing its data production.

24
25 ³ Lucasfilm recently confirmed that George Lucas received email and other electronic documents
26 through assistants. Plaintiffs have requested the names of the assistants, so that Plaintiffs may
27 confirm whether or not Lucasfilm included these assistants in its production of electronic and
28 paper files. As of this date, Plaintiffs are not able to confirm one way or another, but expect that
they will receive this information from Lucasfilm shortly.

⁴ On June 28, 2012, Plaintiffs noticed the deposition of another Adobe witness and another Pixar
witness, in the hopes that these individuals will be available earlier.

1 Apple's data appears to be missing hiring and recruiting information from 2000
2 through 2005, and missing certain compensation data for 2010 through 2012. Apple said it will
3 provide Plaintiffs with the missing compensation data later today. As explained further below,
4 Apple has not yet made available a 30(b)(6) witness knowledgeable about recruiting data to
5 answer these and other questions.⁵ Plaintiffs have also encountered several technical errors with
6 Apple's data, including issues with recruiting files that cannot open properly, and unreadable
7 compensation information. Apple confirmed on Thursday, June 28, that certain duplicate values
8 Plaintiffs observed in the compensation data resulted from mistakes in how Apple merged certain
9 files for production. Apple said it will provide Plaintiffs with corrected compensation data later
10 today.

11 Google's data is missing the dates on which Google's employees received salary
12 changes and promotions, making specific job history information obscure. Google has not
13 committed to producing this information that other Defendants have already produced.

14 Intuit has not produced missing data it agreed to produce by June 15, including
15 certain compensation data covering 2001 through 2009. During its June 26 deposition, Intuit
16 informed Plaintiffs that it was still in the process of pulling this data. Intuit informed Plaintiffs'
17 counsel that Intuit will produce this data on July 4, 2012 or later.

18 To address numerous questions regarding the completeness and interpretation of
19 the various data sets, on May 23, 2012, Plaintiffs noticed a Rule 30(b)(6) deposition for each
20 Defendant regarding data issues.⁶ Plaintiffs sought to take the depositions in early June, but the
21 first 30(b)(6) deposition (Lucasfilm) occurred on June 21. The second 30(b)(6) deposition (Pixar)
22 occurred on June 22. Depositions of Adobe, Apple, Intel, and Google occurred this week,
23 including triple-tracking of the Adobe, Intuit, and Intel depositions on June 26. The Google
24 deposition will be split by topic and witnesses, the first part occurring today, on June 29, and the
25 second part scheduled to take place on July 10, the week prior to Plaintiffs' current class

26 ⁵ Plaintiffs served a 30(b)(6) deposition notice requesting such a witness on May 23, 2012.

27 ⁶ Plaintiffs initiated formal discovery after their attempts to engage an informal process—
28 whereby Plaintiffs' expert could speak directly with Defendants' technical people—were
unsuccessful.

1 certification deadline.⁷ As noted above, Apple did not provide a witness knowledgeable about its
 2 recruiting data during its 30(b)(6) deposition (which was split over two days, at Apple's request).
 3 Today, Apple proposed to make such a witness available on July 12, 2012.

4 These depositions have raised additional questions about Defendants' data
 5 productions, which Plaintiffs are working as quickly as possible to resolve. For example, on June
 6 26, Apple informed Plaintiffs' counsel that, in preparing for the 30(b)(6) deposition, Apple
 7 discovered it had not produced two years (2010-2012) of compensation data, including data
 8 regarding bonuses and stock options, that Apple had agreed to produce by June 15. During the
 9 deposition on June 27, Apple's witness testified that Apple inadvertently withheld the responsive
 10 data it had earlier agreed to produce. Apple said it is producing this data later today.

11 Many of Defendants' 30(b)(6) witnesses have been unprepared to discuss the data
 12 Defendants produced. Several witnesses were also unprepared to discuss what data Defendants
 13 withheld and did not produce. Plaintiffs are meeting and conferring with Defendants regarding
 14 these open questions.

15 In sum, Defendants produced significant data after June 15, and there are
 16 additional data productions that Defendants agreed to complete before June 15 that are
 17 incomplete. The data that Defendants produced is complex and voluminous, and Plaintiffs'
 18 expert analysis for class certification will rely, in part, on the data. Plaintiffs have sought to
 19 resolve data issues and questions promptly, but unexpected delays are continuing. It is unclear if
 20 there are yet more undiscovered data issues, as some Defendants have failed to provide
 21 knowledgeable witnesses regarding the data produced, while others have refused to schedule
 22 those depositions (originally noticed on May 23) until days before Plaintiffs' current July 19
 23 deadline to file the class certification motion. Plaintiffs will continue to try to work with
 24 Defendants to resolve all data issues as they arise.

25 **III. PLAINTIFFS' DISCOVERY RESPONSES**

26 Plaintiffs described the status of their document productions in their Notice of

27 _____
 28 ⁷ Today, Google informed Plaintiffs that its witness cannot be available on July 10. Google said
 it will provide alternative dates for this deposition soon, for "possibly later in the week of 7/10."

1 Compliance with the Court's June 5, 2012 Case Management Order. (Dkt. No. 153.) Plaintiffs
 2 produced a total of approximately 25,156 pages. (Dkt. No. 153-1, ¶ 13.) Plaintiffs completed
 3 their production on June 15, including substantial production on or before June 8. Plaintiffs have
 4 identified no additional responsive documents, and made no supplemental productions, since June
 5 15.

6 On June 14, Defendants asked Plaintiffs to describe the procedure Plaintiffs used
 7 to collect responsive documents. Plaintiffs thereafter provided Defendants with a description of
 8 the process Plaintiffs used to ensure the completeness of their production, a process that included
 9 hard copy and electronic documents, and electronic documents maintained by third parties. In
 10 order to ensure complete transparency, Plaintiffs also provided Defendants with the search term
 11 list Plaintiffs used in their ESI collection. Plaintiffs' document retrieval process resulted in an
 12 initial collection of approximately 106,837 hard copy and electronic documents that Plaintiffs'
 13 counsel reviewed for responsiveness and privilege.

14 Following the June 4, 2012 status conference, Defendants asked Plaintiffs to
 15 reschedule the depositions of the Named Plaintiffs to begin the week of July 30. Plaintiffs agreed
 16 and proposed the following dates: July 31, August 3, August 6, August 13, and August 17. Those
 17 depositions are being confirmed.

18 **IV. PLAINTIFFS REQUIRE ADDITIONAL TIME TO PREPARE THEIR CLASS**
 19 **CERTIFICATION MOTION**

20 In light of Defendants' continuing production of data and documents, Plaintiffs
 21 respectfully submit that extension of the class certification motion deadline would be appropriate.
 22 While Plaintiffs will certainly comply with any schedule the Court deems appropriate, Plaintiffs
 23 believe that a 60-day extension will allow Plaintiffs to receive, analyze, and present the discovery
 24 recently provided by Defendants.⁸ Defendants will have the time to complete their data and
 25 document productions and answer Plaintiffs' data questions. Plaintiffs will then be able to
 26

27 ⁸ Plaintiffs hesitate to point out that even this extended schedule assumes that Defendants
 28 promptly will complete the production of documents and data and make witnesses available for
 depositions.

complete the construction of a database from the 665 datasets Defendants have produced and continue to produce. Plaintiffs' expert will use those datasets to address Plaintiffs' motion for class certification. The additional time will also provide Plaintiffs an opportunity to conduct depositions of certain percipient witnesses regarding the scope of the agreements at issue and the effects of those agreements, using documents recently produced. These depositions may clarify class certification issues.

To assist the Court in evaluating this proposed extension of the schedule, Plaintiffs attach hereto as Exhibit A a proposed modified schedule extending all events in the current schedule by approximately 60 days (as adjusted for weekends and Court holidays).

Dated: June 29, 2012

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